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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Linda Gonzalez,

Plaintiff,

v.

**Smiles Divine Dental TMD Craniofacial
Pain Center, LLC**, an Arizona Limited
Liability Company; and **Luz Tobias and
John Doe Tobias**, a Married Couple,

Defendant.

No. _____

VERIFIED COMPLAINT

Plaintiff, Linda Gonzalez (“Plaintiff”), sues the Defendants, Smiles Divine Dental TMD Craniofacial Pain Center, LLC, (“Smiles Divine”) and Luz Tobias and John Doe Tobias (collectively, “Defendants”) and alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for unpaid wages, liquidated damages, attorneys’ fees, costs, and interest under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, et seq.; the Arizona Minimum Wage Act (“AMWA”), Arizona Revised Statutes (“A.R.S.”); and the Arizona Wage Act (“AWA”), A.R.S. Title 23, Chapter 8.

4. The AWA, A.R.S. § 23-350, et seq., establishes the law regarding the payment of wages within the State of Arizona.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and Defendants regularly conduct business in and have engaged in the wrongful conduct alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.

PARTIES

7. At all material times, Plaintiff is an individual residing in Maricopa County, Arizona, and is a former employee of Defendants.

8. At all material times, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC was a limited liability company duly licensed to transact business in the State of Arizona. At all material times, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC does business, has offices, and/or maintains agents for the transaction of its customary business in Maricopa County, Arizona.

9. Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC is an Arizona limited liability, authorized to do business in the State of Arizona and is at all relevant times Plaintiff's employer as defined by 29 U.S.C. § 203(d).

10. Under the FLSA, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC is an employer. The FLSA defines "employer" as any person who acts directly or indirectly in the interest of an employer in relation to an employee. At all relevant times, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC had the authority to hire and fire employees, supervised and controlled work schedules or the conditions of employment, determined the rate and method of payment, and maintained employment records in connection with Plaintiff's employment with Defendants. As a person who acted in the interest of Defendants in relation to the company's employees, Defendant Smiles Divine Dental TMD Craniofacial Pain Center, LLC is subject to liability under the FLSA.

1 11. Defendants Luz Tobias and John Doe Tobias are, upon information and
2 belief, husband and wife. They have caused events to take place giving rise to the claims
3 in this Complaint as to which their marital community is fully liable. Luz Tobias and
4 John Doe Tobias are owners of Smiles Divine and were at all relevant times Plaintiff's
5 employer as defined by the FLSA, 29 U.S.C. § 203(d).
6

7 12. Under the FLSA, Defendants Luz Tobias and John Doe Tobias are
8 employers. The FLSA defines "employer" as any individual who acts directly or
9 indirectly in the interest of an employer in relation to an employee. Luz Tobias and John
10 Doe Tobias are owners of Smiles Divine. At all relevant times, they had the authority to
11 hire and fire employees, supervised and controlled work schedules or the conditions of
12 employment, determined the rate and method of payment, and maintained employment
13 records in connection with Plaintiff's employment with Defendants. As persons who
14 acted in the interest of Defendants in relation to the company's employees, Luz Tobias
15 and John Doe Tobias are subject to individual liability under the FLSA.
16
17

18 13. Plaintiff is further informed, believes, and therefore alleges that each of the
19 Defendants herein gave consent to, ratified, and authorized the acts of all other
20 Defendants, as alleged herein.
21

22 14. Defendants, and each of them, are sued in both their individual and
23 corporate capacities.
24

25 15. Defendants are jointly and severally liable for the injuries and damages
26 sustained by Plaintiff.
27

1 16. At all relevant times, Plaintiff was an “employee” of Defendants as defined
2 by the FLSA, 29 U.S.C. § 201, *et seq.*

3 17. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
4 Defendants.

5 18. At all relevant times, Defendants were and continue to be “employers” as
6 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

7 19. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
8 Defendants.
9

10 20. At all relevant times, Plaintiff was an “employee” of Defendants as defined
11 by the Arizona A.R.S. § 23-350, *et seq.*

12 21. At all relevant times, Defendants were and continue to be “employers” as
13 defined by A.R.S. § 23-350.
14

15 22. At all relevant times, Plaintiff was an “employee” of Defendants as defined
16 by A.R.S. § 23-362.
17

18 23. At all relevant times, Defendants were and continue to be “employers” as
19 defined by A.R.S. § 23-362.
20

21 24. Defendants individually and/or through an enterprise or agent, directed and
22 exercised control over Plaintiff’s work and wages at all relevant times.

23 25. Plaintiff, in her work for Defendants, was employed by an enterprise
24 engaged in commerce that had annual gross sales of at least \$500,000.
25

26 26. At all relevant times, Plaintiff, in her work for Defendants, was engaged in
27 commerce or the production of goods for commerce.

28. Plaintiff, in her work for Defendants, regularly handled goods produced or transported in interstate commerce.

29. Defendants own and/or operate as Defendant Smiles Divine, an enterprise located in Maricopa County, Arizona.

31. Plaintiff was hired by as a front office worker and biller on or around April 16, 2021 and worked for Defendants until approximately February 28, 2022.

33. Defendants, in their sole discretion, agreed to pay Plaintiff \$19 per hour for all hours she worked.

35. Defendants did not pay Plaintiff her paycheck for her final two weeks of work for Defendants.

37. As a result, Defendants failed to compensate Plaintiff any wage whatsoever for Plaintiff's final two weeks of work.

1 38. On or about February 26, 2022, Defendant Luz Tobias informed Plaintiff
2 via text message that, despite having worked a full two weeks' worth of time, she would
3 not be paying Plaintiff her final paycheck and instead would be using Plaintiff's wages as
4 part of the deposit for her new office.

5
6 39. On or about February 26, 2022, Defendant Luz Tobias sent a text message
7 to Plaintiff stating "I need to put \$5,000 first and last deposit to the new landlord. I won't
8 be able to pay you \$1,200 at the end of the month."

9
10 40. Plaintiff's next payday was supposed to be on approximately March 1,
11 2022.

12 41. To date, Defendants have still paid no wages whatsoever to Plaintiff for
13 such hours worked.

14 42. As a result of Defendants' having improperly failed to compensate Plaintiff
15 any wage whatsoever for Plaintiff's final two weeks of work, Defendants failed to pay
16 the applicable minimum wage to Plaintiff.

17
18 43. As a result of not having paid any wage whatsoever to Plaintiff during her
19 final two workweeks with Defendants, Defendants failed to pay the applicable minimum
20 wage to Plaintiff.

21
22 44. As a result of Defendants' willful failure to compensate Plaintiff any wage
23 whatsoever for such hours worked, Defendants violated 29 U.S.C. § 206(a).

24 45. As a result of Defendants' willful failure to compensate Plaintiff any wage
25 whatsoever for such hours worked, Defendants violated the AMWA, A.R.S. § 23-363.
26
27

1 46. As a result of Defendants' willful failure to compensate Plaintiff any wage
2 whatsoever for such hours worked, Defendants violated the AWA, A.R.S., § 23-351.

3 47. Plaintiff was a non-exempt employee.

4 48. Plaintiff is a covered employee within the meaning of the FLSA.

5 49. Plaintiff is a covered employee within the meaning of the AMWA.

6 50. Plaintiff is a covered employee within the meaning of the AWA.

7 51. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
8 of her rights under the FLSA.
9

10 52. Defendants individually and/or through an enterprise or agent, directed and
11 exercised control over Plaintiff's work and wages at all relevant times.
12

13 53. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
14 from Defendants compensation for unpaid minimum wages, an additional amount equal
15 amount as liquidated damages, interest, and reasonable attorney's fees and costs of this
16 action under 29 U.S.C. § 216(b).
17

18 54. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
19 from Defendants compensation for unpaid wages, an additional amount equal to twice the
20 unpaid minimum wages as liquidated damages, interest, and reasonable attorney's fees
21 and costs of this action under A.R.S § 23-363.
22

23 55. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
24 from Defendants compensation for his unpaid wages at an hourly rate, to be proven at
25 trial, in an amount that is treble the amount of his unpaid wages, plus interest thereon,
26 and his costs incurred under A.R.S. § 23-355.
27

COUNT ONE: FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE

56. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

57. As a result of not paying Plaintiff any wage whatsoever for the final pay period of her employment, Defendant willfully failed or refused to pay Plaintiff the FLSA-mandated minimum wage.

58. Defendant's practice of failing or refusing to pay Plaintiff at the required minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

59. Plaintiff is therefore entitled to compensation for the full applicable minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorney's fees, and costs.

WHEREFORE, Plaintiff, Linda Gonzalez, respectfully requests that this Court grant the following relief in Plaintiff's favor, and against Defendants:

- A. For the Court to declare and find that the Defendant violated minimum wage provisions of the FLSA, 29 U.S.C. § 206(a), by failing to pay proper minimum wages;
- B. For the Court to award Plaintiff's unpaid minimum wage damages, to be determined at trial;
- C. For the Court to award compensatory damages, including liquidated damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- D. For the Court to award prejudgment and post-judgment interest;

1 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
2 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
3 forth herein;

4 F. Such other relief as this Court shall deem just and proper.
5

6 **COUNT TWO: ARIZONA MINIMUM WAGE ACT**
7 **FAILURE TO PAY MINIMUM WAGE**

8 60. Plaintiff realleges and incorporates by reference all allegations in all
9 preceding paragraphs.

10 61. As a result of not paying Plaintiff any wage whatsoever for the final pay
11 period of her employment, Defendant failed or refused to pay Plaintiff the Arizona
12 minimum wage.
13

14 62. Defendant's practice of failing or refusing to pay Plaintiff at the required
15 minimum wage rate violated the AMWA, 23-363.

16 63. Plaintiff is therefore entitled to compensation for the full applicable
17 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
18 twice the underpaid wages as liquidated damages, together with interest, reasonable
19 attorney's fees, and costs.
20

21 **WHEREFORE**, Plaintiff, Linda Gonzalez, respectfully requests that this Court
22 grant the following relief in Plaintiff's favor, and against Defendants:
23

24 A. For the Court to declare and find that the Defendants violated minimum
25 wage provisions of the AMWA, A.R.S. § 23-363 by failing to pay proper
26 minimum wages;
27

1 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
2 determined at trial;

3 C. For the Court to award compensatory damages, including liquidated
4 damages pursuant to A.R.S. § 23-364, to be determined at trial;

5 D. For the Court to award prejudgment and post-judgment interest;

6 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
7 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
8 herein;
9

10 F. Such other relief as this Court shall deem just and proper.
11

12 **COUNT THREE: ARIZONA WAGE ACT**
13 **FAILURE TO PAY WAGES OWED**

14 64. Plaintiff realleges and incorporates by reference all allegations in all
15 preceding paragraphs.

16 65. As a result of the allegations contained herein, Defendants did not
17 compensate Plaintiff wages due and owing to her.
18

19 66. Defendants engaged in such conduct in direct violation of A.R.S. § 23-350.

20 67. As such, unpaid wages for such time Plaintiff worked are owed to Plaintiff
21 for the entire time she was employed by Defendants.

22 68. Plaintiff is therefore entitled to compensation for her unpaid wages at an
23 hourly rate, to be proven at trial, in an amount that is treble the amount of his unpaid
24 wages, plus interest thereon, and his costs incurred.
25
26
27

1 **WHEREFORE**, Plaintiff, Linda Gonzalez, individually, respectfully requests that
2 this Court grant the following relief in Plaintiff's favor, and against Defendants:

- 3 A. For the Court to declare and find that the Defendants violated A.R.S. Title
4 23, Chapter 2, by failing to pay wages owed to Plaintiff;
5
6 B. For the Court to award compensatory damages, including treble the amount
7 of wages owed to Plaintiffs, pursuant to A.R.S. § 23-355, to be determined
8 at trial;
9
10 C. For the Court to award prejudgment and post-judgment interest;
11
12 D. For the Court to award Plaintiff reasonable attorneys' fees and costs;
13
14 E. Such other relief as this Court shall deem just and proper.

15 **JURY TRIAL DEMAND**

16 Plaintiff hereby demands a trial by jury on all issues so triable.

17 RESPECTFULLY SUBMITTED this 16th Day of March, 2022.

18 BENDAU & BENDAU PLLC

19 By: /s/ Clifford P. Bendau, II

20 Clifford P. Bendau, II

21 Christopher J. Bendau

22 Attorneys for Plaintiff
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24
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26
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VERIFICATION

Plaintiff, Linda Gonzalez, declares under penalty of perjury that she has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on her personal knowledge, except as to those matters stated upon information and belief, and, as to those matters, she believes them to be true.



Linda Gonzalez (Mar 16, 2022 20:54 PDT)

Linda Gonzalez

GONZALEZ; COMPLAINT DRAFT 1 (TO CLIENT); 3-16-22

Final Audit Report


2022-03-17

| | |
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